IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAGNUM PHOTOS INTERNATIONAL, INC., Plaintiff, *v.* HOUK GALLERY, INC., EDWYNN HOUK GALLERY, and Does 1-10, Defendants.	Civ. Act. No. 16 CV 7030

COMPLAINT

Plaintiff MAGNUM PHOTOS INTERNATIONAL, INC. ("Magnum"), by and through its counsel of record BRESSLER LAW PLLC, alleges for its Complaint against defendants Houk Gallery, Inc., Edwynn Houk Gallery, and Doe Defendants 1-10 (all collectively, "Defendants") as follows:

Nature of the Action

1. This is a civil action against Defendants for their wrongful acts of direct and indirect copyright infringement (U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*) of exclusive rights in many photographic images created by renowned French humanist photographer Henri Cartier-Bresson (collectively, the "Images").

The Parties

2. Plaintiff Magnum is a corporation organized and existing under the laws of the State of Delaware with its place of business at 12 W. 31st Street, New York, NY 10001. Magnum is a photographic cooperative of great diversity and distinction owned by its

photographer members. With powerful individual vision, Magnum photographers chronicle the world and interpret its peoples, events, issues and personalities.

3. On information and belief, Defendant Houk Gallery, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its place of business at 745 5th Ave., New York, NY 10151 and qualified to do business in the State of New York.

4. On information and belief, Defendant Edwynn Houk Gallery is a legal entity or is a "doing business as" designation or fictitious name for Houk Gallery, Inc. or another legal entity, with a place of business at 745 5th Ave., New York, NY 10151.

5. On information and belief, one or more of Does 1-10 are the agent, affiliate, officer, director, manager, principal, partner, joint venturer, joint actor, alter ego, hired contractor, and/or employee of Defendants Houk Gallery, Inc. and/or Edwynn Houk Gallery. Magnum does not know the true names of Defendant Does 1 through 10, inclusive, and therefore sues them by those fictitious names. Magnum is informed and believes and, on the basis of that information and belief, alleges that each of those Does 1 through 10 was and is in some manner liable for Magnum's claims and proximately caused Magnum's damages asserted herein.

Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 17 U.S.C. § 501(a), as this action alleges infringement of registered U.S. copyright rights and other violations of the copyright laws of the United States, 17 U.S.C. § 101 *et seq*.

7. This Court has personal jurisdiction over Houk Gallery because it does business and/or transacts business within the State of New York.

8. This Court has personal jurisdiction over Edwynn Houk Gallery because it does business and/or transacts business within the State of New York.

9. On information and belief, this Court has personal jurisdiction over one or more of the Doe Defendants because he, she or it does business, transacts business and/or resides within the State of New York.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(c)(2) and 1400(a) because Houk Gallery is subject to personal jurisdiction in this district.

Facts

11. Mr. Cartier-Bresson (1908-2004) was one of the world's most renowned and admired professional photographers. He was a master of candid photography, having pioneered the genre of street photography and revolutionized photography as an art and a reporting tool, capturing what he called "the decisive moment". "Photography is not like painting," the *Washington Post* quoted Mr. Cartier-Bresson as saying in 1957. "There is a creative fraction of a second when you are taking a picture. Your eye must see a composition or an expression that life itself offers you, and you must know with intuition when to click the camera. That is the moment the photographer is creative," he said. "Oop! The Moment! Once you miss it, it is gone forever." *Washington Post* art critic Paul Richard wrote in 1981: "No photographer alive has a more secure position in the history of art than Henri Cartier-Bresson -- aesthete, man of action, artist and reporter."

12. Mr. Cartier-Bresson is the sole author of each of the Images. Each of the Images is original to Mr. Cartier-Bresson, is a proper subject of protection under the U.S. Copyright Act, and is protected internationally by valid and subsisting copyright rights.

13. For all times relevant to this action, Fondation Henri Cartier-Bresson ("Fondation HCB") is and has been the exclusive owner of all copyright rights in and to the Images..

14. For all times relevant to this action, Magnum is and has been Fondation HCB's exclusive licensee of copyright rights in and to the Images, including the copyright rights violated by Defendants. As such, Magnum has standing to bring and maintain this action against Defendants.

15. Each of the Images was first published outside of the United States. As such, each of the Images is a "non-U.S." work as defined by the U.S. Copyright Act, 17 U.S.C. §101, and accordingly is not subject to 17 U.S.C. § 411(a)'s U.S. copyright registration prerequisite for institution and maintenance of an action for copyright infringement. This Court has all jurisdiction and authority, and Magnum has pleaded all claim elements required, to enable this Court to adjudicate Magnum's claims asserted herein.

16. Defendants own and operate the Internet website hosted at www.houkgallery.com (the "Website"). According to Houk Gallery's own Website page:

> The Edwynn Houk Gallery was founded in 1980. Since its inception, the gallery has specialized in vintage photographs from 1917-1939 by the leading figures of the Modernist movement. The gallery has mounted over 200 exhibitions and published more than a dozen monographs.
>
> Houk Gallery has served as the exclusive representative of the Estates of Brassaï, Bill Brandt, Dorothea Lange, André Kertész, Ilse Bing, and the Robert Frank Archive. Beginning with exclusive representation of Sally Mann in 1989, the Edwynn Houk Gallery has acted as the sole agent for a select group of leading

> contemporary photographers, including Robert Polidori, Lalla Essaydi, Annie Leibovitz and Abelardo Morell.
>
> In 2010, on the occasion of its 30th anniversary, the gallery opened a second location in Zürich.[1]

17. On or about September 23, 2013, Magnum learned that Houk Gallery reproduced, publicly displayed, distributed and transmitted (i) certain Images on its Website to advertise and promote an art exhibition conducted from September 12, 2013 to November 2, 2013 in Zürich, Switzerland, and (ii) certain Images on its Website to advertise and promote an art exhibition conducted from March 12, 2009 to May 2, 2009. Attached as Composite Exhibit A to this Complaint is a list of the Images used by the Defendants without authorization, and true and complete copies of the Website pages that reproduced, publicly displayed, distributed and transmitted them.

18. Defendants' reproduction, public display, distribution and transmission of the Images on and via the Website was not authorized by Magnum or anyone acting on its behalf.

19. On information and belief, Defendants otherwise used or may have used one or more of the Images in one or more manners without authorization or consent, and in violation of Magnum's exclusive rights in and to such Images.

FIRST CLAIM FOR RELIEF
Copyright Infringement

20. Magnum repeats and realleges the allegations set forth in the previous paragraphs of this Complaint as if fully set forth herein.

[1] *See* Houk Gallery's Website page hosted at www.houkgallery.com/gallery/.

21. Without authorization or consent, Defendants reproduced, distributed, publicly displayed, transmitted and otherwise used the Images on the Website.

22. On information and belief, Defendants knew that they did not possess rights to reproduce, distribute, publicly display, transmit or otherwise use the Images on the Website, but intentionally did so anyway in contravention of Magnum's copyright rights.

23. Magnum has been damaged by Defendants' unauthorized uses of the Images in an amount to be determined at trial.

24. Among other relief, such wrongful conduct entitles Magnum to an award of actual damages suffered as a result of such infringement, plus Defendants' additional profits attributable to such infringement, in an amount to be determined at trial, plus recovery of Magnum's costs. 17 U.S.C. §§ 504(a)(1) and 505.

Prayer for Relief

WHEREFORE, Magnum respectfully requests judgment against Defendants as follows:

a. declaring Defendants liable for infringement of Magnum's exclusive copyright rights in and to the Images;

b. for Defendants' copyright infringement, awarding Magnum monetary damages in an amount equal actual damages plus Defendants' additional profits attributable to such infringement, in an amount to be determined at trial (17 U.S.C. § 504(a)(1)), plus Magnum's costs (17 U.S.C. § 505);

c. compelling Defendants to account to Magnum for all profits, income, receipts and other benefits derived by Defendants from the reproduction, distribution, transmission, public display, promotion, and sale of products, services and media that infringe copyright rights in and to the Images (17 U.S.C. §§ 504(a)(1) and 501(b)); and

d. awarding Magnum such other and further relief as the Court deems just and proper.

Dated: Pelham, New York
September 8, 2016

Respectfully submitted,

/s/ Joshua R. Bressler

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Composite Exhibit A:

List of Images Used by Defendants Without Authorization and
Copies of www.HoukGallery.com Website Pages

[*See attached pages*.]